IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 690 of 2005.

Decided on: 15.06.2007.

Prem Chand.

… … … Petitioner.

Versus

Union of India and Others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioner: **Mr. K.D. Sood, Advocate.**

For the Respondents: **Mr. Sandeep Sharma, Assistant Solicitor General of India.**

Rajiv Sharma, Judge:

By way of this petition, the following reliefs have been sought for:-

a) That the orders Annexure P-14 dated 13.12.2004, Annexure P-15 dated 13.12.2004, Annexure P-18 dated 13.01.2005, Annexure P-17 dated 12.01.2005 whereby the petitioner has been denied the disability pension and direct to deposit a sum of Rs.2,73,150/- as pension drawn by him since 1984 be quashed;

Whether reporters of local papers may be allowed to see the judgment? No.

b) Direct the respondent to grant the future disability pension to the petitioner in view of the Government policy decision and Regulation and the policy of the Government allowing disability pension to persons whose disability has fallen below 20% after 01.01.1973.

The brief facts necessary for the adjudication of this petition are that the petitioner was recruited as Sepoy in the Indian Army and was declared unfit for civilian job on 3rd August, 1966 and was granted disability pension w.e.f. 3rd October, 1966 to 15th July, 1967 at the rate of Rs.37/- (basic) as per order dated 12.6.1967. He was receiving the disability pension with effect from 12th June, 1966 and the disability pension of the petitioner was fixed at the rate of Rs.25/- with ad hoc increase and ad hoc relief amounting to Rs.15/- from 17.4.1980 to 21.7.1982 with interim relief at the rate of Rs. 45/- per month from 17.4.1980 to 30.4.1980. He was granted disability pension at the rate of Rs.25/- per month from 22.7.1982 to 26.8.1984. He was informed by respondent No.4 on 11th January, 1988 vide Annexure P-12 that his disability claim had been rejected by respondent No.3 as his disability had been assessed at less than 20%. The representation made by him was rejected vide communication dated 21st November, 1988 and on 13th December, 2004 he was informed that his disability pension claim has been re-assessed by respondent No.3 at less than 20% and his appeal had been rejected by the Ministry of Defence, Government of India. He made a representation on 19th December, 2004 for continuation of his pension. Ultimately, on

12th January, 2005, the respondent No.5 had informed him that in view of the position clarified vide Annexure P-14 his pension had been stopped permanently. The respondent No.4 then informed him on 13th January, 2005 that the respondent No.3 had rejected his case and the legal notice served upon the Army Headquarters was also rejected. He was consequently directed to deposit a sum of Rs.2,73,150/- received towards the disability pension.

Mr. Kapil Dev Sood had strenuously argued that his case is covered by the judgment rendered in **1995 (4) SCT, 278 titled Gurnam Singh versus Union of India** whereby the Hon'ble Punjab and Haryana High Court has declared the categorization of personnels receiving invalid pension on the basis of prescription of different periods arbitrary. Mr. Sandeep Sharma had supported the decision taken by the respondents whereby the pension has been stopped permanently and the petitioner has been directed to deposit a sum of Rs. 2,73,150/-.

I have heard the parties and perused the record.

It is not disputed by the parties that the petitioner had been receiving disability pension from 1967 upto 26th August, 1984. it has come in the reply that the disability pension was rejected/discontinued by the PCDA (P), Allahabad w.e.f. 27th August, 1984 vide letter No. G-3/RA/85/5354/II dated 14/17th May, 1985 for two years with effect from 27th August, 1984 as his disability was assessed at less than 20% for two years and he was due for next re-survey medical board in November, 1986 and the re-survey medical board was in fact held on 6th January, 1988 and

his disability was assessed at less than 20% (6-10%). The appeal preferred by the petitioner was rejected in 1989. His pension was temporarily suspended vide communication dated 13th December, 2004 after his disability was re-assessed by respondent No.3 at less than 20% as conveyed to him on 13th December, 2004. His pension was permanently stopped vide communication dated 12th January, 2005.

The question which arises for consideration is whether in view of the contentions raised in para 20 of the petition on the basis of judgment of the Hon'ble Punjab and Haryana High Court he is entitled to disability pension or not. This question has been gone by this Court in CWP No.1175 of 2001 decided on 1.6.2007. This Court after taking note of the judgment reported in **1995 (4) SCT, 278** has held as under:-

> **"Accordingly, the period prescribed as per Annexure P-4 dated 23rd December, 1992, 10 years for individuals invalided out of service before 1.3.1968, 5 years for individuals invalided out of service on or after 1st March, 1968 but before 31.12.1972 has no nexus with the object sought to be achieved. All the individuals invalided out of service form homogeneous class and cannot be permitted to be discriminated against on the basis of the prescription of different periods. All the individuals who had been invalided out of service after suffering the disability have to be treated equally. If there is no length of period of service for the individuals invalided out of service after 1973, the same cannot be permitted to be prescribed for two categories as mentioned above. The respondents cannot treat the equals as un-equals. Accordingly, the clauses (i) and (ii)**

of communication dated 23rd December, 1992 are liable to be quashed and set aside with a direction that the petitioner is to be treated at par with the category, i.e. category (iii) for working out the pension."

The sole ground for rejecting the claim of the petitioner for disability pension is that his disability had been assessed at less than 20 per cent as per annexure R-4, dated 15th January, 1988. The petitioner was discharged from the Army on 3rd October, 1966 and was granted disability pension with effect from 12.6.1967. This Court has already struck down clauses (i) and (ii) of communication dated 23rd December, 1992, in CWP No.1175 of 2001, decided on 1.6.2007. Accordingly, he is entitled to receive the disability pension despite his disability being reduced to less than 20 per cent.

The second question which needs consideration now is whether the petitioner is liable to refund a sum of Rs.2,73,150/- as directed by the respondents. Mr. Kapil Dev had argued that since the case of the petitioner is covered by the judgment of Punjab and Haryana High Court as well as this Court in CWP No.1175 of 2001 decided on 1.6.2007, the petitioner is not liable to refund the amount and to the contrary his submission is that the direction is required to be issued to the respondents to release the disability pension w.e.f. October, 2004 onwards. There is considerable force in the submission made by Mr. Kapil Dev Sood. After the pension of the petitioner has been wrongly discontinued and the petitioner has already been held entitled to disability pension with effect from September 2004, this amount of Rs.2,73,150/- is not liable to be

refunded by him. Mr. Kapil Dev Sood has also relied upon the judgment of the apex Court in **Union of India versus Rekha Majhi, 2000(2) SCT, 676** whereby the apex Court has held that the appellate, i.e. Union of India was not entitled to recover the dearness reliefs on the family pension paid to respondent between 26.1.1987 to 25.1.1994. Paragraph 8 of the judgment is reproduced as under:-

> **"Learned counsel for the respondent then argued that in any case the appellants are not entitled to recover the dearness reliefs on the family pension paid to the respondent between 26.1.87 to 25.1.94. Learned counsel for the appellants has not drawn tour notice any circular or rule prior to 1993. Rule 21 finds place in the Rules which was published in 1993. it, therefore, appears that the dearness relief on the pension paid to the respondent was voluntarily and after a conscious decision taken in respect thereof. And it was only after the Rules 1993 were promulgated and orders for re-fixing her pension and recovery of excess amount on family pension paid to her were issued. Moreover, it is stated that the respondent who is a widow is the lone bread earner of the family and her financial condition is not such as to pay back the excess amount she has already drawn. Under such circumstances, we are of the view that the recovery of excess pension paid to the respondent is not justified on legal and equitable grounds.**
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> **For the aforesaid reasons, the judgment and order under appeal is set aside. The appeal is allowed. There shall be no order as to costs."**

The present case is on better footing. The petitioner at no given time had mis-represented the facts nor suppressed any material from the authorities. The authorities had been paying the disability pension to him from 1988 to September, 2004. The petitioner had utilized the sum of Rs.2,73,150/- by treating the same as belonging to him. Otherwise also in view of the above mentioned discussion, he was always entitled to get the pension even after his disability has been reduced to 20% on the basis of the judgment of this Court rendered in CWP No.1175 of 2001.

Consequently, this petition is allowed. Annexures P-12, P-13, P-17 and P-18 are quashed and set aside. The petitioner is directed to be treated at par with the individuals invalided out of service on or after January, 1973 and he is held entitled to all benefits of disability pension from September, 2004 onwards, as has been granted to those who have been discharged from the service after 1.1.1973. The respondents are directed not to effect recovery of Rs.2,73,150/- already paid to him towards the disability pension. There shall be no order as to costs.

June 15, 2007 **(Rajiv Sharma)**
(sck). **Judge**